FILED
SEP 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 376

JOHN P. PETERS, *Petitioner,*

v.

OVETA CULP HOBBY, ET AL., *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARNOLD, FORTAS & PORTER

By

THURMAN ARNOLD,
ABE FORTAS,
PAUL A. PORTER,
MILTON V. FREEMAN,
Counsel for Petitioner.

ARNOLD, FORTAS & PORTER,
1229 - 19th Street, N. W.,
Washington 6, D. C.

FOWLER HARPER,
VERN COUNTRYMAN,
New Haven, Connecticut
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	2
The Regulation and Constitutional Provisions Involved	2
Statement of the Case	2
Reasons for Granting the Writ	7
I. Petitioner's Removal and Disqualification Were Not Effected in Accordance With the Provisions of Executive Order 9835	8
II. Petitioner's Removal and Disqualification Were Effected Through Proceedings Which Violated the Constitution	10
Conclusion	13
Appendix A. Regulation and Constitutional Provisions Involved	14
Appendix B. Judgment of the Court of Appeals	19

TABLE OF CASES, ETC.

Bailey v. Richardson, 182 F. 2d 46	7, 11, 12
Bailey v. Richardson, 341 U. S. 918	2, 7, 12
Hebert v. Louisiana, 272 U. S. 312	11
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123	11
United States v. Lovett, 328 U. S. 303	11
Wieman v. Updegraff, 344 U. S. 183	10, 11
Constitution, Article I, Section 9, Clause 3	2, 11
Constitution, Fifth Amendment	2, 10
28 U.S.C. Section 1254(1)	1
Executive Order 9835	2, 8-9, 14-18
Executive Order 10241	2, 8, 14-18
Executive Order 10450	8
Executive Order 10491	8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No.

JOHN P. PETERS, *Petitioner*,

v.

OVETA CULP HOBBY, ET AL., *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

OPINIONS BELOW

The District Court wrote no opinion (J.A. 25). The judgment of the Court of Appeals, setting out the basis for its determination of the case (R. 29) is not reported, but is set out in Appendix B, *infra*.

JURISDICTION

The judgment of the Court of Appeals was entered on August 5, 1954 (R. 29; Appendix B, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

This case presents the same question presented but decided only by an equally divided court in *Bailey* v. *Richardson*, 341 U. S. 918:

Whether, following a loyalty board hearing which produced only favorable evidence, a person may be adjudged ineligible for government service and dismissed from non-sensitive federal employment as a result of secret information given by informants who were not under oath, who were not presented at the hearing and whose identities were not disclosed to the employee.

THE REGULATION AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Executive Order 9835, 12 F.R. 1935, March 21, 1947 (5 U.S.C. [Cumm. Supp.] following Section 631), as amended by Executive Order 10241, 16 F.R. 3690, April 30, 1951, and Article I, Section 9, Clause 3 and the Fifth Amendment to the Constitution of the United States. Their texts are set forth below, in Appendix A, *infra*.

STATEMENT OF THE CASE

The case comes to this Court from the affirmance of a judgment on the pleadings for defendants in the trial court. Neither party introduced testimony or documentary evidence below. The statement which follows is therefore based solely on the facts pleaded in the complaint and the admissions and allegations of the defendants in their answer.

* * *

John Punnett Peters is an eminent physician and medical teacher. He is the senior professor of medicine at Yale University (Cplt. Para. 4, J.A. 3; Ans., Para. 4, J.A. 15).

For some few years prior to 1951, Dr. Peters had been employed by the Public Health Service of the Federal Se-

curity Agency.[1] Peters served as a Special Consultant, retained to advise directly the Surgeon General. His only work related to proposals to grant federal assistance to medical research projects under the public health laws of the United States. It was non-sensitive. Dr. Peters at no time had access to confidential or strategic information (Cplt., Para. 5, J.A. 3; Ans., Para. 5, J.A. 15-16).

It is specifically admitted that "plaintiff was appointed to this position because of his eminence in the field of medical science and his service throughout the period of such employment was of value to the United States" (Ans., Para. 5, J. A. 16). In January of 1949, however, he received a letter from Joseph E. McElvain, Chairman of the Board of Inquiry on Employee Loyalty of the Agency, informing him that information "relating to his loyalty had been received" (Cplt., Para. 6, J. A. 4; Ans., Para. 6, J. A. 16). The letter enclosed a detailed interrogatory relating to various of Peters' political activities and requested him to supply the Agency with the information called for therein. Peters completed the form and returned it on January 17, 1949. Shortly thereafter the Board notified him that it had no evidence for holding him disloyal (Cplt., Para. 7, J. A. 4; Ans., Para. 7, J. A. 16).

Almost two years later, in December of 1951, however, plaintiff was informed that the Agency was to reconsider the question of his loyalty, this time through a formal hearing before its own Board of Inquiry. Again by letter, this one dated December 17, McElvain wrote him stating formally that some sixteen charges of questionable activity on his part had been noted, including this time, a charge of membership in the Communist Party of the United States (Cplt., Para. 8, J. A. 4; Ans., Para. 8, J. A. 17). By letter, Peters again answered the allegations. He cate-

---

[1] The agency has since achieved departmental status. Pursuant to Reorganization Plan No. 1 of 1953 and Public Law 13, 83d Cong., 1st Sess., approved April 1, 1953, 67 Stat. 18, its functions were transferred to the Department of Health, Education and Welfare on April 10, 1953. Defendant Hobby is its Secretary.

gorically stated that he had never been a member of the Communist Party (Cplt., Para. 9, J. A. 4; Ans., Para. 9, J. A. 17).

Prior to the hearing, on March 13, 1952, McElvain sent him what purported to be "a written statement of certain information in the possession of said Board." He stated that "certain particular items of such information had been received from confidential informants whose identities were not disclosed by said statement" (Ans., Para. 10, J. A. 17-18).

The hearing of the Agency Board of Inquiry on Employee Loyalty was held in New Haven on April 1 and 2, 1952. In their answer, the defendants state:

> "The sources of the information as to the facts bearing on the charges against plaintiff were not identified at the hearing or made available to counsel for plaintiff for cross examination. The identity of one or more of the informants furnishing such information, but not of all such informants, was known to the Board. The Chairman stated that the Board did not know whether or not the information given by a confidential informant as to facts bearing on Charge No. 1 against plaintiff had been given under oath." (Ans., Para. 12, J. A. 18).

Peters adduced the only evidence during the entire two days of the hearing; no witnesses took the stand against him (Ans., Para. 13, J. A. 18). Peters swore under oath that he had never been a member of the Communist Party and answered all questions posed him by the Board and its counsel (Ans., Para. 14, J. A. 19). His testimony as to his loyalty was supported with "affidavits, letters or statements by approximately 40 additional persons" (*Ibid*).

Within two months, on May 23, 1952, McElvain wrote Dr. Peters stating that the Board of Inquiry had determined again that there was no doubt as to his loyalty (Cplt., Para. 16, J. A. 5-6; Ans., Para. 16, J. A. 19).

Some eleven months later, however, plaintiff received a letter from Hiram Bingham, Chairman of the Loyalty

Review Board of the Civil Service Commission, informing him that his case was to be reopened a second time, in this instance to permit the Commission's Loyalty Board to conduct a "post-audit" of the action of the Agency Board, " 'hold a hearing and reach its own decision' " (Cplt., Para. 17, J. A. 6; Ans., Para. 17, J. A. 19). It was this third proceeding, instituted after more than four years of investigation, hearing and consideration of the matter and after two favorable decisions by the Agency's own Board, which resulted in the dismissal at issue in this case.

The panel of the Loyalty Board, composed of defendants Amen, Hessey and King, convened in New Haven on May 12, 1953 (Cplt., Para. 18, J. A. 6; Ans., Para. 18, J. A. 19). The defendants allege that:

> "at the hearing before the panel of the Loyalty Review Board the only evidence or testimony adduced was that adduced by counsel for plaintiff; that the identity of confidential informants who had given information with respect to the charges against plaintiff was not disclosed to plaintiff; that the identity of one or more of such informants, but not of all such informants, was known to the Board; and that the information given by such confidential informants was not disclosed under oath" (Ans., Para. 20, J. A. 20).

The Board also declined the request of plaintiff's counsel to reveal the identity of the confidential informant in the one instance where the informant's identity was known to the Board (Ans., Para. 21, J. A. 20). The Chairman stated that "the panel would consider evidence given by confidential informants not disclosed to the plaintiff" (Ans., Para. 22, J. A. 20).

When he took the stand, Dr. Peters again began by affirming his complete and unswerving loyalty to the United States. He testified categorically that he had never been a communist (Cplt., Para. 23, J.A. 7; Ans., Para. 23, J. A. 20-21).

Five witnesses supported his statement. Two were former medical students. The other three were Charles

W. Seymour, ex-President of Yale University, Judge Charles E. Clark of the Court of Appeals for the Second Circuit, and C. M. Hugh Long, former Dean of the Yale Medical School. All testified to their firm belief in Peters' loyalty (Cplt., Para. 24, J. A. 7-8; Ans., Para. 24, J. A. 21).

In sum, all the evidence adduced at the hearing was the favorable evidence adduced by plaintiff, and the Board had only secret statements by unsworn, unidentified informants to base an adverse finding. As the defendants affirmatively state in their answer,

> "Defendants allege that at the hearing before the panel of the Loyalty Review Board no evidence was adduced except that adduced by counsel for plaintiff, but allege that the entire record on which the panel of the Loyalty Review Board considered plaintiff's case contained evidence contrary to that adduced by counsel for the plaintiff" (Ans., Para. 25, J. A. 21).

On this record, the Board made its decision that there was a reasonable doubt as to petitioner's loyalty to the Government of the United States. It notified petitioner that he was barred from government service for three years and the Civil Service Commission issued an order to that effect (Cplt., Para. 26, J. A. 8; Ans., Para. 26, J. A. 26). Acting on the Board's recommendation, the Surgeon General discharged Dr. Peters on June 12, 1953 (Cplt., Para. 27, J. A. 8; Ans., Para. 27, J. A. 21). Peters' counsel was not permitted to file a motion for hearing before the full Loyalty Board of the Civil Service Commission (Cplt., Para. 28, J. A. 8-9; Ans., Para. 28, J. A. 22).

Thus, all administrative remedies exhausted, petitioner instituted the present action. His complaint asked for a declaratory judgment that the separation from government service and declaration of ineligibility were invalid and for relief from the said declaration (J. A. 13-14). Following the government's answer, both parties filed cross motions for judgment on the pleadings (J. A. 23-25). Both admitted that the issues in the case were controlled

by *Bailey* v. *Richardson*, 182 F. 2d 46 (D.C. Cir. 1950), affirmed *per curiam*, 341 U.S. 918. The District Court granted the defendants' motion and denied the plaintiff's (J. A. 25). The Court of Appeals *per curiam*, by a 2-1 vote, affirmed because, as it said, "[w]e feel obliged to follow the ruling in [*Bailey*] in the determination of the present case" (Appendix B). Judge Edgerton dissented from the judgment on the grounds stated in his dissent in *Bailey* (Appendix B, *infra*).

REASONS FOR GRANTING THE WRIT

The issue is precisely that presented in *Bailey* v. *Richardson*, 182 F. 2d 46 (D.C. Cir. 1950), affirmed in this Court by an equally divided vote, 341 U.S. 918. The material facts are parallel with *Bailey*: An eminent physician and medical teacher is employed by the government as a consultant. After more than four years of service in an entirely non-sensitive field, he is charged, among other things, with membership in the Communist Party. At the so-called hearing on this issue, the only evidence submitted is his own and that of favorable witnesses. On the face of the record, it is clear that he is loyal to the United States. The Board, however, has been informed that certain persons, whom they have never seen, told members of the government's investigative police that this employee is disloyal. The statements of the informers were not under oath. The identity of the informers is not revealed to the plaintiff. The informers are not produced and the identity of all but one is unknown to the Board. Relying on their statements, the Board formally finds the plaintiff of doubtful loyalty, relieves him of his position and orders him disqualified from government service.

The issue in this case is not Dr. Peters' "right to a job." It is not the power of the government to protect the security of sensitive agencies like the Atomic Energy Commission or the Department of Defense, for Dr. Peters' job had nothing to do with high policy or state secrets.

The issue is solely the use of star chamber methods to impose on non-sensitive employees the stigma of a dishonorable discharge and disqualification from government service.

The procedure by which the Board relied on secret, unsworn statements against Dr Peters presents important legal and constitutional questions which have not been but should be decided by this Court. The necessity for review and decision now is amply demonstrated by the division of the court below in this case, in *Bailey* v. *Richardson*, *supra*, and the grant of certiorari together with the inability of this Court to resolve the issue three years ago in *Bailey*.

a. Petitioner's Removal and Disqualification Were Not Effected in Accordance With the Provisions of Executive Order 9835.

The separation and disqualification here were effected under the provisions of Executive Order 9835, promulgated May 21, 1947, 12 F.R. 1935, as amended by Executive Order 10241, April 30, 1951, 16 F.R. 3690 (Appendix A, *infra*).[2] It is petitioner's first contention that the proceedings culminating in his dismissal from government service on grounds of disloyalty were not in compliance with the Order.

Part II, Section 4 of the Order specifically guarantees a "right of hearing." Section 2.a. of the same Part states that the procedure is to be that of an "administrative hearing." Part V, Section 1, requires that the determination be made "on all the evidence".

This was a sham hearing. Throughout the three days of the two hearings no witness appeared in opposition to the petitioner's claim of loyalty. No evidence was introduced that supported an inference of disloyalty. A bare

---

[2] Executive Order 9835 was subsequently superseded by Executive Order 10450, promulgated April 27, 1953 and amended by Executive Order No. 10491, promulgated October 15, 1953.

right to testify does not satisfy the standard of an "administrative hearing" established by the Order. Nor can the term "evidence" include secret reports from person unknown to the Board.

The government does not controvert the factual allegations on these points contained in the complaint. It admits the receipt of unidentified allegations, the failure to present the unfavorable witnesses for cross-examination, and the reliance by the Board on their secret, unsworn statements. But it contends that such a procedure is exactly what the Order contemplates. We disagree.

Whatever the shortcomings of the Loyalty Program established by Executive Order 9835, and the difficulty of administering its standard of guilt, it was never intended to permit this. Individual rights and reputations are at stake, as the authors of the Order well knew. In its preamble it distinctly states:

> "Whereas maximum protection must be afforded the United States against infiltration of disloyal persons into the rank of its employees, and *equal protection from unfounded accusations of disloyalty must be afforded the loyal employees of the Government*" (Emphasis supplied).

The Order itself requires notice, hearing and a decision made "on all the evidence." These requirements cannot be construed as mere facade.

The lower Court in the *Bailey* case, and the Loyalty Board here, construed the Order, however, in a fashion which granted the employee no protection whatsoever. They held, in effect, that the words "maximum protection" of the Government, "equal protection" to the employee, and the words "on all the evidence" are satisfied even if the so-called evidence to support a finding of disloyalty was secret information not under oath supplied by informants unknown even to the Board. The provision for a "hearing" means under this construction that the employee may testify without knowing the crucial information

against him and without being given any real guide or clue as to how he may meet it. Thus, where the Order said that the employee was to retain the equal of "maximum protection," it did not mean maximum protection; that when it said "evidence" it did not mean evidence; that when it said "hearing" it did not mean hearing in the traditional American sense. Such an interpretation flies in the face of the plain meaning of the words used; it permits, as here, a departure from normal and accepted procedure and standards of fairness in an area of great consequence and should not be accepted without review by this Court.

II. Petitioner's Removal and Disqualification Were Effected Through Proceedings Which Violated the Constitution.

If the Executive Order did authorize the proceedings in the instant case, then the Order and petitioner's removal under it violated the Constitution of the United States.

1. Petitioner here was condemned and excluded from government service on the basis of secret information. This action was in violation of the due process clause of the Fifth Amendment (Appendix A, *infra*). The injury asserted is precisely that so recently recognized by this Court in *Wieman* v. *Updegraff*, 344 U.S. 183, 190-191:

> "There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy. Especially is this so in time of cold war and hot emotions when 'each man begins to eye his neighbor as a possible enemy.'"

Where such exclusion is effected in violation of the requirements of the Fifth Amendment, the Constitution provides relief:

> "It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory." *Id.* at 192.

See also *Hebert* v. *Louisiana*, 272 U.S. 312, 316-7. The entire procedure here, involving the use of secret statements as a basis for a finding of disloyalty to the United States and disqualification from serving its government, was "patently arbitrary", *Wieman* v. *Updegraff*, *supra*.

Plaintiff swore he was not a communist; the Board found him disloyal by relying on unsworn, second-hand statements to the FBI. It never saw his accusers or permitted them to be cross-examined. In terms of "due process of law" nothing could be more arbitrary. Black, Frankfurter, Douglas and Jackson, JJ. discussed such a procedure for exclusion of individual employees from government service in their opinions in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 142, 149, 174, 183. We think these opinions demonstrate that the hearing here was arbitrary and in violation of the due process clause of the Fifth Amendment and we rely on them. See also Judge Edgerton's dissenting opinion in the Court of Appeals in *Bailey* v. *Richardson*, *supra*, 182 F. 2d at 66.

2. Disqualification from government service without a proper hearing as here imposed constitutes a bill of attainder, forbidden by Article I, Section 9, Clause 3 of the Constitution (Appendix A, *infra*). Petitioner has been declared unqualifiedly ineligible for even a non-sensitive position. In sum, the government has proclaimed him "disloyal" to all that the United States stands for. It has stigmatized him before his friends and his profession. Clearly he has been "attainted" and penalized in violation of the constitutional provision. See *United States* v. *Lovett*, 328 U.S. 303; *Cf. Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 142 et seq. (concurring opinion of Mr. Justice Black).

* * *

The methods employed here are as dangerous to our institutions as they would be if used to obtain criminal convictions. The loyalty program under which Peters' exclu-

sion was effected, for the first time in our history all
the Government to condemn and brand its citizens
secret evidence. By its formal provisions for "notic
"evidence", and "hearing", it is a device for drawing
the public acclaim and Congressional favor which, perh
rightly, is accorded security-minded officials. In no
does it aid the hunt for truly dangerous employees; de
tion and discharge without comment are entirely poss
in such cases. But so long as the zeal of departme
executives in the public interest is measured by the num
of employees they brand and dismiss, this procedure
mits and indeed tempts such executives to sanction use
rumor, falsehood and hearsay to condemn.

Such a procedural development presents issues of pa
mount public importance. They were raised but not
tled in the *Bailey* case where the identical procedure
affirmed by an equally divided vote of this Court afte
division in the lower court. The procedure followed
this case permits an administrative agency to set u
blacklist for all Government employees whom it consid
disloyal and to compel all departments to follow t
practice. One may wonder whether the dangers of C
munist infiltration in a department like Public Hea
justifies a blacklist. But that is not the question bef
this Court. Here the administrative agency demands
right to establish its blacklist without giving the bla
listed employee the safeguards of a fair administra
hearing. By considering unsworn secret evidence fr
informants it has never examined nor seen it exerci
arbitrary power over the career of any individual in
government service. Such procedure presents a quest
of fundamental importance to the Government of
United States and our democratic way of life.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ARNOLD, FORTAS & PORTER

By

THURMAN ARNOLD,
ABE FORTAS,
PAUL A. PORTER,
MILTON V. FREEMAN,
Counsel for Petitioner.

ARNOLD, FORTAS & PORTER,
1229 - 19th Street, N. W.,
Washington 6, D. C.

FOWLER HARPER,
VERN COUNTRYMAN,
New Haven, Connecticut
Of Counsel.

APPENDIX A

Regulation and Constitutional Provisions Involved

Executive Order No. 9835, March 21, 1947, 12 F.R. 1935, as amended by Executive Order No. 10241, April 30, 1951, 16 F.R. 3690

PRESCRIBING PROCEDURES FOR THE ADMINISTRATION OF AN EMPLOYEES LOYALTY PROGRAM IN THE EXECUTIVE BRANCH OF THE GOVERNMENT

WHEREAS each employee of the Government of the United States is endowed with a measure of trusteeship over the democratic processes which are the heart and sinew of the United States; and

WHEREAS it is of vital importance that persons employed in the Federal service be of complete and unswerving loyalty to the United States; and

WHEREAS, although the loyalty of by far the overwhelming majority of all Government employees is beyond question, the presence within the Government service of any disloyal or subversive person constitutes a threat to our democratic processes; and

WHEREAS maximum protection must be afforded the United States against infiltration of disloyal persons into the ranks of its employees, and equal protection from unfounded accusations of disloyalty must be afforded the loyal employees of the Government;

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including the Civil Service Act of 1883 (22 Stat. 403), as amended, and section 9A of the act approved August 2, 1939 (18 U.S.C. 61i), and as President and Chief Executive of the United States, it is hereby, in the interest of the internal management of the Government, ordered as follows:

PART I—INVESTIGATION OF APPLICANTS

* * *

PART II—INVESTIGATION OF EMPLOYEES

1. The head of each department and agency in the executive branch of the Government shall be personally respon-

sible for an effective program to assure that disloyal civilian officers or employees are not retained in employment in his department or agency.

a. He shall be responsible for prescribing and supervising the loyalty determination procedures of his department or agency, in accordance with the provisions of this order, which shall be considered as providing minimum requirements.

b. The head of a department or agency which does not have an investigative organization shall utilize the investigative facilities of the Civil Service Commission.

2. The head of each department and agency shall appoint one or more loyalty boards, each composed of not less than three representatives of the department or agency concerned, for the purpose of hearing loyalty cases arising within such department or agency and making recommendations with respect to the removal of any officer or employee of such department or agency on grounds relating to loyalty, and he shall prescribe regulations for the conduct of the proceedings before such boards.

a. An officer or employee who is charged with being disloyal shall have a right to an administrative hearing before a loyalty board in the employing department or agency. He may appear before such board personally, accompanied by counsel or representative of his own choosing, and present evidence on his own behalf, through witnesses or by affidavit.

b. The officer or employee shall be served with a written notice of such hearing in sufficient time, and shall be informed therein of the nature of the charges against him in sufficient detail so that he will be enabled to prepare his defense. The charges shall be stated as specifically and completely as, in the discretion of the employing department or agency, security considerations permit, and the officer or employee shall be informed in the notice (1) of his right to reply to such charges in writing within a specified reasonable period of time. (2) of his right to an administrative hearing on such charges before a loyalty board, and (3) of his right to appeal before such board personally, to be accompanied by counsel or representative of his own choosing, and to present evidence on his behalf, through witness or by affidavit.

3. A recommendation of removal by a loyalty board shall be subject to appeal by the officer or employee affected, prior to his removal, to the head of the employing department or agency or to such person or persons as may be designated by such head, under such regulations as may be prescribed by him, and the decision of the department or agency concerned shall be subject to appeal to the Civil Service Commission's loyalty Review Board, hereinafter provided for, for an advisory recommendation.

4. The rights of hearing, notice thereof, and appeal therefrom shall be accorded to every officer or employee prior to his removal on grounds of disloyalty, irrespective of tenure, or of manner, method, or nature of appointment, but the head of the employing department or agency may suspend any officer or employee at any time pending a determination with respect to loyalty.

5. The loyalty boards of the various departments and agencies shall furnish to the Loyalty Review Board, hereinafter provided for, such reports as may be requested concerning the operation of the loyalty program in any such department or agency.

PART III—RESPONSIBILITIES OF CIVIL SERVICE COMMISSION

1. There shall be established in the Civil Service Commission a Loyalty Review Board of not less than three impartial persons, the members of which shall be officers or employees of the Commission.

a. The Board shall have authority to review cases involving persons recommended for dismissal on grounds relating to loyalty by the loyalty board of any department or agency and to make advisory recommendations thereon to the head of the employing department or agency. Such cases may be referred to the Board either by the employing department or agency, or by the officer or employee concerned.

b. The Board shall make rules and regulations, not inconsistent with the provisions of this order, deemed necessary to implement statutes and Executive orders relating to employee loyalty.

c. The Loyalty Review Board shall also:

(1) Advise all departments and agencies on all problems relating to employee loyalty.

(2) Disseminate information pertinent to employee loyalty programs.

(3) Coordinate the employee loyalty policies and procedures of the several departments and agencies.

(4) Make reports and submit recommendations to the Civil Service Commission for transmission to the President from time to time as may be necessary to the maintenance of the employee loyalty program.

* * *

PART IV—SECURITY MEASURES IN INVESTIGATIONS

* * * *

PART V—STANDARDS

1. The standard for the refusal of employment or the removal from employment in an executive department or agency on grounds relating to loyalty shall be that, on all the evidence, there is a reasonable doubt as to the loyalty of the person involved to the Government of the United States.*

2. Activities and associations of an applicant or employee which may be considered in connection with the determination of disloyalty may include one or more of the following:

a. Sabotage, espionage, or attempts or preparations therefor, or knowingly associating with spies or saboteurs;

b. Treason or sedition or advocacy thereof;

c. Advocacy of revolution or force or violence to alter the constitutional form of government of the United States;

---

* Before being amended by Executive Order 10241, this paragraph of Executive Order 9835 read:

> "1. The standard for the refusal of employment or the removal from employment in an executive department or agency on grounds relating to loyalty shall be that, on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States."

Except for the recited change, which is not central to the issues of this case, the Order is identical to that involved in *Bailey* v. *Richardson*, *supra*.

d. Intentional, unauthorized disclosure to any person, under circumstances which may indicate disloyalty to the United States, of documents or information of a confidential or non-public character obtained by the person making the disclosure as a result of his employment by the Government of the United States;

e. Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

f. Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement or group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of facts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

PART VI—MISCELLANEOUS

* * *

ARTICLE I, SECTION 9, CLAUSE 3 OF THE CONSTITUTION OF THE UNITED STATES

No Bill of Attainder or ex post facto Law shall be passed.

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX B

Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

APRIL TERM, 1954

No. 12,246

JOHN P. PETERS, *Appellant*,

v.

OVETA CULP HOBBY, ET AL., *Appellees*.

Appeal from the United States District Court for the District of Columbia.

Before: Edgerton, Miller, and Prettyman, Circuit Judges.

Judgment

The above-entitled case came on for consideration on the record on appeal from the United States District Court for the District of Columbia, on appellant's motion to enter judgment on the merits without formal briefs or argument and on appellees' reply thereto, and on the stipulation of the parties filed herein August 3, 1954. The parties agree that the case presents the same issue decided by this Court in Bailey v. Richardson, 86 U.S. App. D.C. 248, 182 F. 2d 46 (D.C. Cir. 1950). The Supreme Court affirmed the judgment of this Court therein by an equally divided Court, Bailey v. Richardson, 341 U.S. 918. We feel obliged to follow the ruling in that case in the determination of the present case.

ON CONSIDERATION WHEREOF, It is ORDERED by this Court that appellant's motion for the entry of judgment on the merits in this case without formal briefs or argument be, and it is hereby, granted, and it is FURTHER ORDERED and ADJUDGED by this Court that the judgment of the United States District Court for the District of Columbia on appeal herein be, and it is hereby, affirmed.

Dated: August 5, 1954

Per Curiam

Edgerton, Circuit Judge, concurs in granting appellant's motion but dissents, for the reasons stated in his dissent in Bailey v. Richardson, from the judgment of affirmance.

United States Court of Appeals
For the
District of Columbia Circuit

FILED Aug. 5, 1954

Joseph W. Stewart
Clerk